

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

RECEIVED
JAN 18 1994
THE RECORDERS COURT
APPELLATE DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN

-vs-

DeJUAN MARNELL EDWARDS,

MYRON VIRGIL ASKEW, and

JAMES HENRY McHENRY,

Defendants.

Case No. 93-03113

DEC 07 2004

CLERK'S OFFICE
DETROIT

MOTION

Proceedings had and testimony taken before the
Honorable DAPHNE MEANS CURTIS, Judge of the Recorder's Court,
at Room 802, Frank Murphy Hall of Justice, Detroit,
Michigan, on Tuesday, June 8, 1993, commencing at or
about the hour of 10:00 A.M.

APPEARANCES:

ROBERT AGACINSKI

Assistant Prosecuting Attorney

Appearing on behalf of the

People of the State of Michigan

DAVID REDSTONE

Appearing on behalf of

Defendant-Edwards

RECEIVED
MAY 26 1994
COURT OF APPEALS
FIRST DISTRICT

RECEIVED
JAN 18 1994
THE RECORDERS COURT
APPELLATE DIVISION

(Appearances - continued.)

OTIS CULPEPPER and PAULINE SAROKI

Appearing on behalf of

Defendant-Askew

THOMAS QUARTERMAN

Appearing on behalf of

Defendant-McHenry

Regenia S. Veasy, C.S.R. (R-2350)

Detroit, Michigan

Tuesday, June 8, 1993

About 10:00 A.M.

--- --- ---

THE COURT: People of State of Michigan
versus DeJuan Edwards, File Number 93-03113. The record
should reflect that DeJuan Edwards is in the Courtroom.

Mr. Redstone, this is your Motion.

MR. REDSTONE: Yes, Your Honor --
good morning.

It is fairly self-contained. My client
is charged with Felony Murder. The underlying offense
alleged is Armed Robbery. And, as I indicated in my
Motion the only evidence supporting or tending to show
that there was an armed robbery was that one of the
surviving Complainants discovered some property missing
after returning to the home from the hospital. He
didn't testify that he saw the items in the possession
of my client or any of the Defendants. He didn't
testify that he saw my client or any of the
Co-defendants take those items. And, the elements of
armed robbery include the requirement that the property
be taken from the Complainant or the Complainant's
presence.

And, in support of that being an

2 element, People versus McGuire, at 39 Michigan Appeals,
3 308, a 1972 case, and People versus Clark, reported at
4 113, Michigan Appeals, 477, a 1982 case. In the Clark
5 case the Court held that armed robbery was not made out
6 when the property was discovered missing from a truck
after the Defendant escaped.

7 And I would also cite People versus
8 Beebe, B-e-e-b-e, reported at 70, Michigan Appeals 154,
9 which is a 1976 case where the Court held that property
10 is in the presence of complainant if it is within his or
11 her reach, observation, or control, so that the
12 complainant could have kept the property but for the
13 threat of violence from the Defendant.

14 In this case the Complainant testified
15 at the Exam that there was a shoebox of money missing
16 from under his bed. I specifically asked him whether he
17 saw my client in his bedroom, which he said he didn't.
18 He didn't know who took the property. He didn't see
19 anyone in the bedroom.

20 Mr. Agacinski is going to say there was
21 also a gun taken from the scene that was in the area
22 where the shooting occurred, but there is no testimony
23 that the gun was taken from him. He testified that he
24 put it down on the table and at sometime later the
25 shooting started, and when he came back to the house

2* later after coming back from the hospital the gun is
gone.

3 So my position is that there is no
4 evidence to show that any property in this case is --
5 the shoebox of money or the gun was taken from the
6 Complainant or taken in the Complainant's presence and,
7 therefore, the only other felony is Assault with Intent
8 to Murder. That is not an enumerated felony in the
9 felony murder statute, and there is no predicate felony
10 for felony murder. And, also armed robbery hasn't been
11 made out. So what I am asking for the Court to do is to
12 reduce the charge from Felony Murder to Second Degree
13 Murder and to dismiss the Armed Robbery Count.

14 THE COURT: Mr. Agacinski?

15 MR. AGACINSKI: Well, the or from the
16 person or in his presence element occurs when force is
17 necessary to accomplish the taking, the use of force,
18 which is shooting of the weapons which caused all the
19 victims to flee. The gun was right on the table right
20 in front of him before he was forced to flee. It is the
21 fleeing that made the gun available. The shoebox is in
22 the very next room which would have been in his dominion
23 and control as well. I suggest because that was the use
24 of force that extracted the property that caused him to
25 flee the house and the property to be taken, we do have

2 a from his presence or from his person element. If
3 there is any -- well, we would amend the Information
4 to the lesser offense of larceny. It doesn't have to be
5 robbery. Larceny itself is enough of an offense to
6 justify the felony murder. So if the from his presence
7 element exists for felony murder, it doesn't cost us
8 anything to amend the Information to a somewhat lesser
9 required element of murder, a murder during the taking
10 of a larceny.

11 I suggest the fact that we did have the
12 scenario I described, we do have the robbery. We also
13 have had testimony that one of the witnesses said they
14 waited outside until the police arrived and there was no
15 trafficking in or out of the house before the police got
16 there. So, no people running in and out taking items,
17 simply the victims fleeing, the shooters fleeing, and
18 then the police make their entry into the house. So,
19 the suggestion that it may have been stolen by someone
20 else I think is negated by that testimony, at least as
21 far as raising it as a question of fact. I'd ask the
22 Court to allow us to continue as charged.

23 THE COURT: Your response?

24 MR. REDSTONE: I don't think that
25 larceny has been made out either. There is simply no
evidence that my client or one of the Co-defendants took

1 the items involved. I know the Court has read the
2 transcript. This is a known dope house. There are
3 seven or eight other people in the house at the time
4 that this occurred. They were in various parts of the
5 house. Any of those people could have taken the
6 opportunity to take this property.

7 And, as far as the gun being on the
8 table, the way Mr. Agacinski stated it, it is as if he
9 is sitting there with the gun in front of him when the
10 shooting happens. That is not what happened. The
11 Complainant involved got up, had his back turned to the
12 room where the gun was taken, and went into kitchen when
13 the shooting started. The gun wasn't in his presence at
14 the time the shooting started.

15 But, I think with respect to that
16 larceny, it is very important that this is a location
17 where it is known that a criminal enterprise is being
18 engaged in. There is people just hanging out in this
19 house. I think it is a guess for the Magistrate to
20 say -- with no evidence to show that these Defendants
21 took the property, it is a guess for that Magistrate to
22 say -- it is an inference based on inference to say
23 that these are the people that took the property. I
24 mean these people were busy with guns shooting, and
25 there is some testimony to indicate that the shooting

1 occurred and they ran out. Based on the way the
2 testimony is in the transcript, it would be hard to see
3 where my client would have had opportunity to go into
4 this bedroom and look under the bed and find this item.
5 The witness testified that he had no reason to believe
6 that -- I don't think he said specifically about my
7 client, but he had no reason to think that the
8 Co-defendants knew that the shoebox of money was even
9 there.

10 Basically the argument that these
11 Defendants committed larceny is no different than they
12 committed the armed robbery. It is not just enough that
13 the force was used and that in the course of this the
14 property was taken. It has to be taken from the
15 presence of the Complainant by these Defendants, and I
16 don't think that has been made out.

17 THE COURT: One of my concerns from
18 reading the transcript is that apparently there were
19 three people killed, a Miss Powers -- I think Evelina
20 Powers, someone named Petrous, and Tyrone Davis, I
21 believe.

22 MR. AGACINSKI: Yes.

23 THE COURT: According to the
24 transcript, at the time the Defendant -- this
25 Defendant, Mr. Edwards, and another man came in the

1
2 house, there were six or seven people there. There was
3 someone named Abraham, there were three Davises, and
4 there was the witness, the first witness who was on the
5 stand, who was --

6 MR. REDSTONE: (Interposing) Jimmy
7 Davis.

8 THE COURT: Yes, Jimmy Davis. If my
9 count is incorrect, please let me know.

10 There were six or seven people in the
11 home before the two Defendants entered and before the
12 gunshots were fired, and before these three people were
13 killed.

14 On reading through the transcript,
15 there is no indication as to who took either the gun or
16 the money under the bed. That is the single biggest
17 problem with the Felony Murder Count. I mean one might
18 say it is likely that the persons who came in took the
19 things. But, we don't have anybody who saw either of
20 the Defendants go in the bedroom and take the money from
21 under the bed. Assuming that there was, in fact, a
22 shoebox full of money under the bed, we don't have any
23 testimony regarding that. If so, point me to that
24 portion of the transcript. And, we don't have any
25 indication of what happened to the gun.

If you only have three people in the

1 house and those three people are killed, and the two
2 people who came into the house have shot and left, the
3 reasonable inference is -- assuming you have some
4 other factors, other elements -- that the people who
5 shot those people took the gun and took the money. You
6 don't have that in this case.

7 The money is even a bigger problem
8 because it wasn't until after one of the witnesses
9 recovered sufficiently to be released from the hospital
10 that the money under the bed was discovered missing. I
11 don't know and I don't think any of the attorneys can
12 say what happened to the money between the time of the
13 shooting and the time that this person came home and
14 discovered the shoebox missing.

15 I think not only do you have a problem
16 with there has to be an assault and the items have to be
17 taken from -- there is an assault, of course -- but
18 the money or other property has to be taken from the
19 person or in the presence of the person. You have a
20 problem with the identity of any person or persons who
21 took the property in question. You don't have the
22 elements of the armed robbery to form the basis of a
23 felony murder in this case, and the Motion to amend to
24 conform to the proofs is granted for the reasons just
25 stated on this record.

1 MR. AGACINSKI: So we are done as far
2 as Mr. Edwards is concerned, reduced three Counts of
3 Murder I to Second Degree Murder, and we have quashed
4 the Armed Robbery Count?

5 THE COURT: That is correct.

6 MR. REDSTONE: Your Honor, I have had
7 some discussion with your Clerk about setting a trial
8 date. I have to go to 36th District Court. I am
9 available all through October. I will check back later
10 in the morning to get the actual date.

11 THE COURT: Off the record.

12 (At about 9:50 A.M. - discussion
13 held off the record.)

14 THE COURT: Back on the record.

15 People of the State of Michigan versus
16 Myron Askew, A-s-k-e-w, and James McHenry, this is File
17 Number 93-03113.

18 The Court just heard the Motion with
19 respect to the third Defendant in this case, DeJuan
20 Edwards.

21 Your appearances, please?

22 MR. QUARTERMAN: Thomas Quarterman,
23 appearing on behalf of James McHenry.

24 MR. AGACINSKI: Robert Agacinski, for
25 the Prosecution.

1 MR. CULPEPPER: W. Otis Culpepper,
2 appearing on behalf of Myron Askew.

3 MS. SAROKI: Pauline Saroki, also on
4 behalf of Myron Askew.

5 THE COURT: Mr. Culpepper?

6 MR. CULPEPPER: Your Honor, we filed a
7 Motion in this matter. And, I understand from Mr.
8 Agacinski that he would concede that the Motion should
9 be granted. With that, I have no argument.

10 THE COURT: I don't think that is quite
11 what he's saying.

12 MR. AGACINSKI: As I said, the argument
13 for Mr. Culpepper is the same that Mr. Redstone raises.
14 The argument is the same, the evidence is the same, and
15 a consistent ruling should result. I don't agree, but I
16 think it should be consistent.

17 MR. CULPEPPER: That is what I thought
18 he said. We stand on our Motion.

19 THE COURT: I have had opportunity to
20 read the Motion, and essentially the same argument is
21 raised as was raised by Mr. Redstone in behalf of his
22 client, Mr. Edwards. And, the Court earlier ruled that
23 there was insufficient evidence establishing the
24 elements of the underlying armed robbery, and therefore,
25 the three Counts of Felony Murder should be quashed.

1 The charges should be reduced to Murder in the Second
2 Degree on those three Counts, and the Armed Robbery
3 dismissed. That is with respect to Mr. Askew.

4 Mr. Agacinski is not conceding that the
5 same argument would be applicable to Mr. Quarterman's
6 client, Mr. McHenry.

7 Mr. Quarterman?

8 MR. QUARTERMAN: Your Honor, I would
9 join in Mr. Redstone and Mr. Culpepper's arguments. It
10 would seem to me -- and as I stated in my Brief --
11 that the evidence in this case against my client comes
12 from his statement. If we assume he points up to the
13 taking of my client's statement, then if the People have
14 not established a robbery, they have not established the
15 corpus delicti of a crime.

16 And, according to the People v Allen
17 they cannot use my client's statement without
18 establishing the corpus delicti. They cannot make out
19 the elements of the crime or the corpus delicti of the
20 crime with my client's statement. It is my position,
21 with the Court having ruled that there has been no
22 showing of a robbery of anybody or any taking of
23 whatever, based on the proofs in the transcript, then
24 clearly the People have not established the corpus
25 delicti of robbery, and therefore, my client's statement

1 cannot be introduced.

2 And, I would rely on the cases cited in
3 my Brief, as well as the People v Allen I believe is
4 still good law in spite of the People v Williams
5 regarding felony murder cases. And, it would just seem
6 to me it only follows that in the People's proofs at the
7 Preliminary Examination, if they had not established a
8 robbery or a larceny, then they cannot use my client's
9 statement to make that determination. And, I would
10 think on the basis of that, the Information should be
11 quashed entirely with regard to my client because there
12 is no way that they can properly or should properly be
13 able to introduce his statement.

14 Furthermore, my client -- the
15 Information should have been quashed or should be under
16 any circumstances quashed regarding a felony firearm
17 with him because there is no showing at anytime under
18 any circumstances that he had a gun. And, the People
19 charged in the warrant and the Preliminary Examination,
20 a felony firearm. There has been no showing that he
21 aided and abetted the procurement or passing of a gun to
22 any individuals, that he was in the vehicle waiting for
23 a robbery to take place.

24 I would further submit to the Court
25 that under the law of the People v Aaron, as well as the

1 People versus Kelly, 423, Michigan Reports, 261, that
2 there has been no showing that my client had any intent
3 to commit a crime or commit a murder, and had no
4 knowledge that a murder would be, in fact, committed.
5 And, I think that on that case stands for felony murder
6 cases whereby as an aider and abettor you must show that
7 the aider and abettor had knowledge that a murder would
8 be committed and had the intent based on his actions.

9 We have nothing in the transcript
10 either by the corporation of my client's statement or
11 whatever that would show any intent on his part. In
12 fact, he affirmatively states that he had no knowledge
13 that a killing would take place or any intent to kill
14 anybody or whatever. And, I submit to the Court that on
15 that basis the People have not made out a felony murder
16 against my client. Aaron states that you must look to
17 the culpability of the Co-defendant.

18 THE COURT: Or the principal?

19 MR. QUARTERMAN: Yes -- the
20 Co-defendant, whether or not he had the requisite intent
21 as a principal. There is no showing of that. Even if
22 we incorporate in my client's statement -- incorporate
23 my client's statement, I would submit, at best, the
24 People have made out a case of second degree murder.
25 But, they have not even made out second degree murder

1 because without showing my client's statement you can't
2 get to my client sitting in the car. There is no
3 testimony on the record that places my client doing
4 anything. Even though a crime has been committed,
5 nothing on the record brings my client into this case
6 without using his statement. And, I submit to the Court
7 that the corpus delicti of any of the crimes charged
8 does not, in any way, point to my client, and therefore,
9 his testimony couldn't even be used in terms of
10 subjecting him to second degree murder. And, I would
11 ask the Court to quash the Information regarding all of
12 the Counts.

13 THE COURT: Mr. Agacinski?

14 MR. AGACINSKI: Mr. Quarterman raises
15 several issues. And, the Aaron issue was certainly
16 discussed at the Exam. I wonder if the Court had a
17 chance to read the argument when I quoted extensively
18 from Aaron? And the Court in Aaron says particularly a
19 violent crime could provide evidence that one had the
20 state of mind for murder, the gross recklessness and
21 wilful disregard that one's activity could lead to
22 murder. The violence of one's activity and the crime
23 itself might provide evidence of that.

24 And, I argue participating in,
25 knowingly and by driving armed, going to a dope house,

1 knowing people who are going to be in the dope house who
2 know you and you're going to rob people who can identify
3 you as far as a gunman is inherently dangerous and risky
4 and a life-threatening situation. Knowingly
5 participating in that kind of robbery is gross and
6 wilful disregard that one's participation may lead to
7 death. That's the Aaron Court. And, my argument said
8 as the result, by being a knowing driver of rip-off of a
9 dope pad, armed with armed gunmen and armed participants
10 who know each other, one has to be responsible for the
11 death that follows, the corpus delicti.

12 The Felony Firearm could be made out
13 through the person's confession. The Court said in
14 People versus Hughey, 186 Michigan Appeals, 585 the
15 Court says the Williams Rule regarding corpus delicti of
16 premeditated murder also applies to felony murder. We
17 have second degree murder certainly in that we have
18 three dead bodies who were shot, as the result the
19 corpus delicti of murder. Then we use the Defendant's
20 confession to show it was a felony murder because he
21 went to the location to rob and he said that when the
22 men came out he saw the gun that was taken from the
23 premises. So, through his confession we certainly have
24 the corpus delicti -- not the corpus delicti, but the
25 evidence of felony murder.

1 He admits that he was there to rob and
2 that something was taken from the premises. So, if the
3 Court believes that being the driver in that kind of
4 situation has the mens rea of second degree murder, then
5 he's indeed stuck with a first degree murder charge
6 even when the shooters and takers are going to be tried
7 as second degree murder as an armed robbery.

8 We did have evidence of the taking. We
9 have the confession that's taken during the course of
10 the robbery by people who intended to take. Again,
11 because of that, the situation is different than it was
12 for the other two Defendants. As the result, he is
13 also, I would argue, stuck with the armed robbery
14 charge.

15 As far as the Felony Firearm charge is
16 concerned, I'd argue that he is an aider and abettor.
17 He knowingly transports individuals who are armed,
18 knowing they are armed for the purpose of conducting a
19 felony involving those weapons. As the result, he is an
20 aider and abettor in the procurement and transportation
21 of the weapons that were used to secure the armed
22 robbery.

23 I would argue that although it was, or
24 the participation may be less than, as the driver,
25 legally he could be charged with first degree murder,

1 armed robbery, and the felony firearm charge. He is not
2 charged, I believe, with the two Counts of Assault with
3 Intent to Murder. I would ask the Court to allow us to
4 go to trial on Mr. McHenry because of the combination of
5 his statement as well as the application of all of the
6 other facts we have argued.

7 MR. QUARTERMAN: May I just add two
8 things?

9 THE COURT: Yes.

10 MR. QUARTERMAN: I believe what Mr.
11 Mr. Agacinski -- I don't agree with his interpretation
12 of Aaron. I think what he is putting before the Court
13 is a pre-Aaron strict liability argument, that I think
14 the case he cited does not remove the People v Allen. I
15 think it may support Williams, but I think Allen still
16 is good law with regard to felony murder. And, I would
17 submit that his arguments do not in any way destroy the
18 intent that is discussed in the People versus Kelly, and
19 in no way is his statement or can his statement or any
20 action on his part be construed or inferred as him
21 having any intent to kill or participate in any type of
22 robbery. And, I think, Aaron clearly talks about
23 accessory's degree of culpability.

24 Here we have no showing of any
25 culpability with regard to Mr. McHenry in terms of any

1 type of murder or intent to murder. And, I would submit
2 going back to my argument regarding Allen, with the
3 People not having made out any elements of the corpus
4 delicti of any type of robbery -- even in my client's
5 statement, he doesn't say -- he said they had a gun,
6 that they brought a gun back -- it doesn't say where
7 it came from or whatever. I would submit to the Court
8 that that is no showing -- as in the proofs in the
9 transcript that were presented by the People do not, in
10 any way, show a robbery or even a taking.

11 THE COURT: The Felony Firearm Count as
12 far as the Court is concerned is fairly easy. The
13 Defendant does not have to be -- this particular
14 Defendant does not have to be in actual possession of
15 the firearm for the Felony Firearm Count to stand
16 against him, for him to be charged properly with that
17 Count. And, in this case, according to the statement,
18 he drove two other men to this particular location which
19 clearly appears to be a dope house. Those people were
20 armed at that time. He aided and abetted the carrying
21 of the firearms, and that Count should stand.

22 As far as the murder Counts are
23 concerned, the Felony Murder, it is still the law that
24 the aider and abettor has to share the knowledge --
25 well, has to have knowledge of what is going on, what is

1 happening, and has to share the intent of the principal
2 or principals.

3 In this particular case this Defendant
4 was sitting outside, had reason to know that an armed
5 robbery was going to occur or that, at least, it had
6 been planned and discussed. That is why he was there.
7 He was the driver to the scene and purportedly away from
8 the scene once the offense occurred.

9 The People still had the obligation at
10 the time of the Preliminary Examination to establish the
11 elements of an armed robbery before they could connect,
12 by way of the statement, this Defendant to the armed
13 robbery. If, in fact, there was a taking in someone's
14 presence, from the person or in the person's presence,
15 and all of the other elements, the Defendant's statement
16 could be used then to connect him as a perpetrator of
17 the robbery. There was no showing of the elements of
18 robbery absent the Defendant's statement, so you still
19 can't make out a felony murder Count as to this
20 Defendant.

21 The Defendant will be bound over -- I
22 am sorry, the Felony Murder Count will be amended to
23 Murder in the Second Degree as to this Defendant, and
24 the Felony Firearm Count will stand.

25 MR. AGACINSKI: What -- the

1 bind-over -- the Court rules as far as Mr. McHenry --

2 THE COURT: (Interposing) I said
3 bound over, but that was inappropriate language. That
4 was incorrect. I am saying I am amending the Count,
5 quashing the original Count of Felony Murder and
6 amending to Second Degree Murder on those three Counts,
7 and the Count of Felony Firearm remains.

8 MR. AGACINSKI: Thank you. We need to
9 set a trial date. I am sure we are going to appeal Mr.
10 McHenry's ruling -- the other two -- I am sure Mr.
11 McHenry. I feel confident of my argument. If I have
12 enough time or could have a stay as far as there --
13 well, there should be a severance. His statement is
14 going to be used, and the other two men -- or have two
15 juries. I know we are doing to go after Mr. McHenry for
16 Murder I. I can do Mr. Culpepper and Mr. Redstone and
17 do Mr. McHenry a little later on.

18 THE COURT: There is one other thing.
19 You filed a Motion, Mr. Quarterman, to suppress the
20 statement. Are we ready to go on that?

21 MR. AGACINSKI: That officer has been
22 on furlough. He is coming back tomorrow and he will be
23 available the rest of June. I wonder if we could either
24 set a trial date and have that matter heard and
25 reschedule that? We can set a trial date and have it

1 heard before trial.

2 THE COURT: Are you requesting separate
3 trials? Or I should look at you, Mr. Quarterman --
4 well, Mr. Culpepper?

5 MR. QUARTERMAN: It would be him.

6 MR. CULPEPPER: Yes, Your Honor. We
7 would.

8 THE COURT: Mr. Redstone is not here,
9 but, I would expect that he would want a trial separate
10 from Mr. McHenry, but I don't know if he would want a
11 separate trial from Mr. Askew.

12 MR. AGACINSKI: I think he also needs
13 one, Your Honor, because Mr. McHenry's statement
14 implicates both individuals in the activity and in the
15 proposed theft. Mr. Redstone and Mr. Culpepper can go
16 together.

17 THE COURT: That is what I am saying.
18 I don't think there is a problem with Askew and Edwards.

19 MR. CULPEPPER: From Mr. Redstone's
20 comments as he left the Court, he has his days open. It
21 appears however you set it he is ready to go. He was
22 prepared to go with all three together.

23 THE COURT: How many witnesses for
24 the People?

25 MR. AGACINSKI: Twenty, Your Honor,

1 twenty that will be called.

2 THE COURT: So these are real
3 witnesses?

4 MR. AGACINSKI: Yes, Your Honor.

5 THE COURT: And, as far as Mr. Askew?

6 MR. CULPEPPER: Five, Your Honor.

7 THE COURT: As far as Mr. McHenry?

8 MR. AGACINSKI: I bet we are talking
9 about seven or eight trial dates, a lot of civilians, a
10 lot of cross examination.

11 THE COURT: Seven or eight days?

12 MR. CULPEPPER: When I hear twenty
13 witnesses, I always believe it is really going to be
14 around what, thirteen real witnesses. So I mean with
15 twenty witnesses, if you get twenty witnesses and put
16 everybody on, you know you get five and-a-half hours of
17 testimony everyday.

18 MR. AGACINSKI: Yes, three victims,
19 three autopsies, I think we are talking about seven or
20 eight trial days.

21 THE COURT: And, these are going to be
22 juries in each case?

23 MR. CULPEPPER: Right now, yes.

24 THE COURT: You didn't tell me how many
25 witnesses for Mr. McHenry, Mr. Quarterman?

1 MR. QUARTERMAN: I would say two, Your
2 Honor.

3 THE COURT: Mr. Redstone is not here to
4 tell me how many witnesses for Mr. Edwards, but we will
5 get with him later.

6 THE COURT: All right.

7 THE CLERK: October 4th?

8 MR. AGACINSKI: It is good for me.

9 MR. CULPEPPER: If discussions
10 develop -- I just found out from Mr. Agacinski that he
11 would not object to a waiver. If we work out a waiver,
12 can we come in and get an accelerated date?

13 THE COURT: I don't know if we had
14 earlier dates for waivers.

15 MR. CULPEPPER: I just mentioned -- I
16 mean the date is good, but I am not convinced that a
17 jury trial necessarily is what we wanted.

18 THE COURT: Well, you will have
19 opportunity to discuss it with your client and let us
20 know as soon as you are able to give us some indication
21 if it turns into a waiver.

22 MR. CULPEPPER: Okay.

23 THE COURT: All right. I will set
24 October 4th as to all three even if it winds up Mr.
25 McHenry has a separate jury.

1
2 MR. CULPEPPER: May we speak to the
3 issue of bond?

4 THE COURT: Do I have bond reports?

5 MR. CULPEPPER: I am not aware.

6 THE COURT: What I will do is refer the
7 Defendants for a screening report so that I will have
8 information with which to intelligently make a decision.

9 MR. CULPEPPER: How long before it
10 will be ready?

11 THE COURT: It takes seven days. It
12 takes a week to get a report.

13 MR. QUARTERMAN: I would also ask for
14 a bond report or bond hearing.

15 MR. AGACINSKI: If we had a bond
16 hearing on Mr. Quarterman we can also do the Walker
17 Hearing. He is the only one involved with the Walker
18 Hearing, so we don't have to worry about coordinating.

19 THE COURT: How about next Wednesday?
20 How about Tuesday?

21 MR. AGACINSKI: I am in trial, but a
22 short hearing I am sure I could slip away for whatever
23 we need.

24 MR. CULPEPPER: I am in trial, too. I
25 am front of Judge Kerwin. Just for a bond hearing, Miss
Saroki can do the bond hearing.

1 MR. AGACINSKI: Miss Saroki is with
2 Mr. Culpepper?

3 THE COURT: Yes. We will set it for
4 next week Tuesday.

5 MR. QUARTERMAN: I have a pretrial in
6 Oakland County Circuit Court at eight-thirty. It may be
7 adjourned since my client is in Federal Court in trial.
8 So, that is a good date.

9 MR. AGACINSKI: All right.

10 THE COURT: June 15 -- we will need
11 to sign the Final Conference Form.

12 Mr. Culpepper still has the other Askew
13 file.

14 MR. AGACINSKI: Oh, that's right.

15 THE COURT: So we are still on the
16 record. This is File Number 93-02940, People versus
17 Myron Askew, and the charges are Robbery Armed, Felony
18 Firearm.

19 MR. CULPEPPER: W. Otis Culpepper,
20 appearing on behalf of the Defendant, Mr. Askew.

21 THE COURT: All right. What is your
22 pleasure with respect to this case, Mr. Culpepper?

23 MR. CULPEPPER: A jury trial, Your
24 Honor.

25 THE COURT: No offer has been made, I

would assume?

MR. AGACINSKI: No, Your Honor.

THE COURT: Waiver or jury?

MR. CULPEPPER: At this point a jury,
Your Honor.

THE COURT: How many witnesses for the
People, Mr. Agacinski?

MR. AGACINSKI: Six, Your Honor.

THE COURT: Mr. Culpepper?

MR. QUARTERMAN: Three, Your Honor.

THE COURT: Two days to try this case?

MR. AGACINSKI: Yes.

THE CLERK: How is August 4th?

MR. AGACINSKI: I can't do it then.

MR. CULPEPPER: I can't do it either.

MR. AGACINSKI: I am in trial August
4th. The following week I am on vacation.

MR. CULPEPPER: My suggestion would be
to follow it. It may be a mute question.

THE COURT: We may have to do that.

THE CLERK: October 13th?

MR. AGACINSKI: That's good.

MR. CULPEPPER: Good.

THE COURT: October 13, 1993 -- please
sign the Final Conference Summary, Mr. Culpepper, and

have Mr. Askew sign it.

That will close the record.

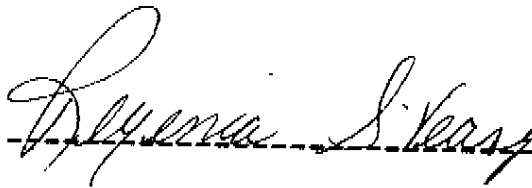
(At about 10:30 A.M. - Motions
concluded.)

- - -

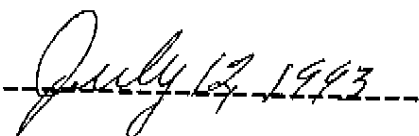
CERTIFICATION OF COURT REPORTER

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, REGENIA S. VEASY, CSR-2350, an
Official Court Reporter in and for the Recorder's Court
for the City of Detroit, State of Michigan, do hereby
certify that the foregoing pages 1 through 29 inclusive,
in the matter of DeJUAN MARNELL EDWARDS, MYRON VIRGIL ASKEW,
and JAMES HENRY McHENRY, Case Number 93-03113, on Tuesday,
June 8, 1993, and was reduced to typewritten form by means of
Computer-assisted Transcription, and comprise a full, true and
accurate transcript of the proceedings had in the
above-entitled cause.



Official Court Reporter



Date